IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3984 of 1999
With
SPECIAL CIVIL APPLICATION No. 6332 of 1997
With
SPECIAL CIVIL APPLICATION No. 7271 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the civil judge?

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KALRAV EDUCATION TRUST & 7 - Petitioner(s)

Versus

DIRECTOR OF HIGHER EDUCATION & 11 - Respondent(s)

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SPECIAL CIVIL APPLICATION NO. 3984 OF 1999

Appearance :

MR ANSHIN H DESAI for Petitioner(s) : 1,
MR SIRAJ GORI, ASSISTANT GOVERNMENT PLEADER for Respondent No: 1 to3.
MR BS PATEL for Respondent(s) : 4,
MRS RANJAN B PATEL for Respondent(s) : 4,
MR MN BHAVSAR for Respondent(s) : 5 - 12.

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SPECIAL CIVIL APPLICATION NO. 7271 OF 1997

Appearance :

MR ANSHIN H DESAI for Petitioner(s) : 1,
MR SIRAJ GORI, ASSISTANT GOVERNMENT PLEADER for Respondent No: 1 to3.
MR HS MUNSHAW for Respondent(s) : 4,

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SPECIAL CIVIL APPLICATION NO. 6332 OF 1997

Appearance :

MR ANSHIN H DESAI for Petitioner(s) : 1,
MR SIRAJ GORI, ASSISTANT GOVERNMENT PLEADER for Respondent No: 1 & 2.
MR HS MUNSHAW for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 10/02/2006

ORAL JUDGMENT

1. Since the issues arising in these petitions are interconnected, they have been clubbed together. I have heard learned advocates appearing for the parties with respect to all the petitions and these petitions, are therefore, disposed of by this common judgment.

2. The petitioner is common in all the petitions and is an Education Trust. The petitioner–Trust runs Higher Secondary School in Halol area of Panchmahals District. The petitioner had necessary permission to run the school up to 10th Standard i.e. S.S.C. Level. On 02.02.1997 advertisement was issued by the State Government inviting interested parties who were desirous to run classes for 11th Standard in Science Stream. In response to this advertisement the petitioner–Trust applied to the State Government on 28.02.1997 and sought permission to run Standard 11th and 12th Science Stream classes. On 06.06.1997 the Director of the Higher Education rejected the request of the petitioner. The petitioner–Trust

sought review of the order passed by the Director by its application dated 10.06.1997. Since no order was passed on Review Application, the petitioner preferred appeal to the State Government on 26.06.1997. On 11.07.1997 permission was granted to the petitioner by the Director of Higher Education to open classes for 11th Standard Science Stream. Necessary recognition was also granted. This was however granted with condition that the petitioner will not claim grant from the State Government for running above additional classes. In fact the petitioner also had given an undertaking to this effect through affidavit dated 25th July, 1997 as required by the State Government and as agreed to by the petitioner. The petitioner also deposited a sum of Rs. 2 Lakhs with the Government on 23rd July, 1997.

3. It is the case of the petitioner that Respondent No.4 viz. V.M.Gujarati Medium High School who had never applied within time prescribed by the advertisement dated 2nd February, 1997, was granted permission to run Higher Secondary School in Science Stream and was also given grant for the said purpose. The petitioner had objected to granting of such permission and grant to Respondent No.4. In fact, in September 1997 the petitioner raised

its specific objections against the action of the Government in giving recognition and grant in favour of Respondent No.4. It is the case of the petitioner that permission given to Respondent no.4 to start additional classes would be unhealthy competition and that in any case, grant ought not to have been made payable, and that Respondent No.4 had never applied within time pursuant to the advertisement dated 2nd February, 1997.

4. The petitioner received communication dated 29.07.1998 from the Director of Higher Education asking the petitioner to apply for payment of grant, if so desired pursuant to the Circular dated 01.09.1997 issued by the State Government. It is the case of the petitioner that by the said Circular dated 01.09.1997, the Government had reviewed its policy for not giving grant for Higher Secondary Science Stream Classes. In response to this communication dated 29.07.1998, the petitioner actually applied for being given grant vide its application dated 29.08.1998. This application was never disposed of by the State Government or by the Director of Higher Education and the request of the petitioner for being paid grant for higher secondary education has never been formally decided by the respondents.

5. On the above factual background, Special Civil Application No. 6332 of 1997 came to be filed by the petitioner–Trust complaining about running of unrecognised Higher Secondary School at Halol by the rival Trust. Special Civil Application No. 7271 of 1997 came to be filed opposing recognition being granted to Respondent No.4-Trust. Special Civil Application No. 3984 of 1999 came to be filed with the main prayer of setting aside the action of Respondent Nos. 1, 2 and 3 in granting permission to Respondent No.4- Trust to start 12th Standard Science Stream Gujarati Medium at Halol.

6. During the pendency of the petition, the petitioner-Trust, made necessary amendments with regard to grant not being given in the body of the petition and the cause title. In Special Civil Application No.7271 of 1997, prayer [XII] (AA) was added which reads as follows:

> "[AA]Your Lordships may be pleased to allow the present petition by issuing a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction, by directing the respondents, their officers, agents, employees and servants, to grant recognition to the petitioner school with grant from the date of application namely 27/2/97 i.e. from the year 1997 onwards"

7. It can thus, be seen that the controversy which started between the petitioner–Trust and Respondent No.4 in Special Civil Application No. 7271 of 1997 was with respect to competition for starting Standard 11th and 12th Science Stream Classes. With passage of time, it has taken somewhat different turn. Initially, the petitioner opposed any recognition being granted to the said institute by the State Government, as also opposed the action of State Government bearing financial burden of such classes. Both the institutes have been operating since 1997-98. There is no complaint about dearth of science students for Standard 11th and 12th Classes of either of two schools. The State Government has not found it appropriate to withdraw recognition of either of the two trusts for want of sufficient students. In that view of the matter, this Court at this distant point of time, need not go into the question of legality of recognition granted to Respondent No.4 for running Higher Secondary science stream classes. The petitioner has independently approached for being given grant. The question of grant to the petitioner for the above purpose does not depend on the grant being given to Respondent No.4-Trust. In that view of the matter, I would like to examine the request of the petitioner for being granted grant for

such classes on its merits independently of the issue of Respondent No.4 receiving such a grant.

8. Learned Advocate for the petitioner submitted that the State Government erred in not making the said classes of 11th and 12 Science Stream grantable. He submitted that the petitioner had applied for recognition at a time when the State Government did not encourage paying grant for such classes. Shortly, thereafter, the policy of the Government changed. This is emerging from the Circular dated 01.09.1997. In fact pursuant to this very Circular, the Director of Higher Education called upon the petitioner to apply for grant, if so desired, by his communication dated 29.07.1998. On the basis of this communication, the petitioner applied for grant on 29.08.1998. Such application was never decided. He submitted that respondent no.4 never applied within time was given grant. This according to the learned Advocate for the petitioner was so because a sitting M.L.A. was having personal interest in respondent No.4–Trust who wielded his considerable influence with the State machinery. He submitted that because of these reasons, respondent no.4 was not only recognized but also granted grant though no formal application was made within the

time prescribed.

9. Reliance was placed on the decision of the Hon'ble Supreme Court in the case of ***State of Mahashtra V. Manubhai Pragaji Vashi and others reported in (1995) 5 SSC 730*** wherein the Hon'ble Supreme Court was pleased to provide that private law colleges cannot be treated differently from other streams, holding that for proper imparting education in legal field, grant-in-aid is necessary. Hon'ble Supreme Court upheld the decision of the Bombay High Court in making such colleges grantable.

10. Reliance was also placed on the decision of the Hon'ble Supreme Court in the case of ***Chandigarh Administration and Others. v. Rajni Vali (Mrs) and Others reported in (2000) 2 SSC 42*** wherein the Hon'ble Supreme Court observed that the Government cannot shirk from the responsibility of providing primary and secondary education and grant-in-aid to private schools for efficient functioning of schools and maintaining standards of teaching and that financial burden cannot be accepted as a valid ground for denying pay parity.

11. Mr. Siraj Gori, learned Assistant Government Pleader submitted that the petitioner-Trust had undertaken to

abide by certain terms before the State Government, that the petitioner-Trust shall not claim any grant. He drew my attention to Paragraph No.2,3,8 and 9 of the undertaking dated 25th July, 1997 given by the petitioner-Trust to the State Government. On the basis of such undertaking he contended that the petitioner cannot make any claim for grant-in-aid from the State Government. In the alternative he suggested that the petitioner has amended the petition in the year 2005. When the petitions were instituted, no prayer for relief of grant was made by the petitioner. Any consideration for releasing grant therefore, should be prospective.

12. Mr. Chirag B.Patel, learned Advocate appearing for Respondent No.4–Trust submitted that the said respondent had no grievance as long as request of the petitioner for being paid grant is concerned. Reliefs made against respondent No.4-Trust may kindly be refused.

13. As noted earlier, the challenge which now survives in these petitions is with respect to the request of the petitioner for being paid grant for Standard 11th and 12th Science Stream Classes. It is true that the petitioner was given recognition in the year 1997 on condition that

the petitioner will not claim any grant for such classes. It is true that the petitioner-Trust had itself given undertaking dated 25th July, 1997 to the State Government, that the petitioner accepts the recognition without grant and that the petitioner will fulfill all its commitments including pay of the teachers and absorb all surplus teachers, even without payment of grant. However, this was on the basis of the then prevailing Government policy.

14. The Government vide its Circular dated 01.09.1997 relaxed its policy of not granting recognition with grant to certain institutes. In the Circular dated 01.09.1997, two important kinds of institutions are envisaged for relaxation. Those schools imparting education to girls exclusively and those institutions which are running science classes. The Circular dated 01.09.1997 was issued to encourage education amongst girls and to sustain interest in science stream. The Circular further provided that considering the increasing importance of science stream, applications for starting Higher Secondary Science Stream Classes can be allowed with grant also. It is pursuant to this Circular, that the petitioner-Trust was called upon to apply for grant, if

so desired, by the Office of the Director of Higher Education vide communication dated 29.07.1998. The petitioner promptly applied on 29.08.1998 and requested for releasing of grant. Such request was never turned down or granted. There are no specific reasons stated in the affidavit-in-reply filed by the State Government for not accepting the request of the petitioner. Main thrust of the argument is that the petitioner had agreed not to claim any grant. It is also stated that the request of the petitioner is belated. No reasons are stated why the petitioner cannot be considered for being paid grant. The undertaking given by the petitioner dated 25.07.1997 cannot be enforced against the petitioner in view of the changed scenario when the State Government itself reviewed its policy and made certain relaxations in the policy of releasing grant. The petitioner like any other institution would have right to apply for being paid grant. If the petitioner fulfills the requirements and falls with the policy parameters of the State Government, its case should be considered for releasing grant.

15. The petitioner cannot be shutout at the threshold from even making application in this regard. The State Government ought to have considered the request of the

petitioner on its merits rather than allowing it to go by default. Additionally the State Government has not given any reasons, which are forthcoming on record to suggest that the request of the petitioner could not have been granted on merits.

16. I therefore, find that the application of the petitioner for being paid grant is required to be considered on its merits. Since no formal decision is taken in this regard, I find that the State Government should consider all the aspects of the matter and take decision with respect to releasing of grant in favour of the petitioner pursuant to its application dated 28.08.1998. Mr. Gori, learned Assistant Government Pleader submitted that the petitioner had not raised such contention specifically for substantial period of time. The petitioner's main thrust was against respondent No.4 -Trust getting recognition and grant for the same classes. From 1997-98 till 2005, the petitioner had received fees from the students. The petitioner must have raised funds for meeting its financial requirements. Therefore, it would not be proper to ask the State Government to consider the application with retrospective effect. However, for the coming academic year of 2006-07,

the State Government should consider the request of the petitioner within the permissible parameters. Such exercise should be completed well in advance, in any case, before the new academic year begins. The exercise should be completed before 30th April, 2006. If the State Government requires any further material from the petitioner, it will be open to the State Government to call upon the petitioner to supply the same. Learned Advocate Mr. Desai for the petitioner submitted that the results of school run by the petitioner–Trust are exceptionally good. He submitted that in Standard 11, the school has achieved 100% result and in 12th Standard, the percentage is also high and is ranging between 75% to 90%. He submitted that this would be a relevant consideration for the State Government for deciding the question of grant. I am sure, if these facts are brought to the notice of the State Government, the same will be considered before taking final decision. Mr. Gori, learned Assistant Government Pleader submitted that the State Government will take fair decision on the basis of availability of material on record.

17. In view of these observations and directions, the petitions are disposed of. Rule is made absolute to the

aforesaid extent in Special Civil Application No. 7271 of 1997. Rule is discharged in Special Civil Application No. 3984 of 1999 and Special Civil Application No. 6332 of 1997.

[Akil Kureshi, J.]

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